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U.S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON AVIATION

Hearing on Congestion Management in the New York Airspace
June 18, 2008

Good morning. I am William R. DeCota, the Director of Aviation for the Port Authority of NY & NJ, which operates LaGuardia, John F. Kennedy International, Newark Liberty International, Stewart International and Teterboro airports.

The Port Authority is committed to promoting safe and efficient air travel connecting the New York metropolitan region with the rest of the world. Our three major airports handle over 109 million passengers and 2.7 million tons of cargo and generate over $57 billion in annual economic activity. The Port Authority has taken various steps to enhance capacity and meet the demand for air travel. Over the past ten years, we have invested over $15 billion in upgrades to our airports and have programmed an additional $6 billion over the next decade. In November 2007, we purchased the leasehold interest in Stewart International to help meet the growing regional demand for air travel. Also in 2007, the Port Authority's Chairman, Anthony Coscia, convened the Flight Delay Task Force, composed of senior airline, business, FAA and state and local leaders which identified over 77 initiatives to improve capacity and reduce delays at our airports.

We also know that the FAA has made investments in aeronautical systems. However, despite these investments, the FAA has been unable to accommodate the same number of annual operations in the New York region as they were a decade ago. We are confounded by this.

The Port Authority has also attempted to work with U.S. DOT and FAA officials on the problem of flight delays for nearly a decade.

In April 2000, Congress had the noble goal of opening up access to the nation's most important, popular, yet constrained airports to stimulate competition and provide opportunity for entry to new markets. For the New York area airports, Congress allowed the FAA and DOT nearly seven years to figure out an appropriate framework.

The FAA took the challenge, engaging the National Center of Excellence for Aviation Research (NEXTOR) universities to examine a range of administrative as well as market-based solutions. No one can deny that the FAA did not spend a lot of time and money on this research effort.

However, we grew to fear these academic exercises. While the professors might be able to explain "in theory" how a market-based solution could solve all the problems at my airports, they were never able to demonstrate how it would work in practice. As the operator of the New York area's key airports, with our proprietary rights and responsibilities to allocate gates and terminal facilities and manage the groundside facilities, the Port Authority attempted to fully engage the DOT and FAA as well as the airlines and other key stakeholders in evaluating potential options to enhance capacity and efficiency and to promote competition and diversity of service at the airports.

Unfortunately, after seven years we are no closer to a workable solution. Rather, the Administration has chosen to impose an approach that we, as the airport operator, think is not only illegal but also disastrous; that the vast majority of the carriers, including the legacy and low cost carriers, are opposed to; and that consumers, represented by such groups as the Air Travelers Association and the Business Travelers Coalition, believe will ultimately harm rather than help them.

The SNPRM for La Guardia and the NPRMs for JFK and Newark are attempting to impose slot auctions despite our collective concerns. We particularly regret that the LGA SNPRM provided only 60 days for comment despite being incomplete; it fails to provide either specific auction rules or the statutory authority for such activity by the FAA. It is also deficient in its supporting data and analyses. Despite requests from both airport and airline stakeholders for a reasonable comment period and corrected information necessary for a proper evaluation of the proposals, it appears that the priority is to fast-track these half-baked, unpopular proposals for implementation before the end of the year.

We are concerned that the Administration's approach is fundamentally flawed, unworkable, unresponsive to the problem, and disruptive to the airport, to air carriers schedules, and ultimately, to the traveling public.

To start, we believe that the FAA lacks the statutory authority to lease slots at rates determined by an auction. *Nowhere in the Federal Aviation Act is there a declaration that slots are property* and *nowhere is there the authorization to auction or lease slots for monetary compensation there from*. We believe that the FAA would need Congressional authority to lease slots at rates determined by auction. The FCC's auction of radio wave spectrum serves as an example of Congressional authorization required to endow an agency with the power to raise revenue by requiring payment in return for permitting someone to engage in regulated conduct. The FCC, like the FAA, did not have the authority to raise revenue by permitting regulated conduct (there broadcasting, here flying into LaGuardia) until Congress granted it that authority in 1993 to auction off permission to use specified frequencies. We believe that without Congressional authorization, the FAA's auctioning of "slots" amounts to an unauthorized tax without the Congressional authorization to do so.

We are also very concerned that these proposals represent an attack on the proprietary rights of airport operators and will do significant damage to long-standing business arrangements at the New York area airports. However, rather than address this issue at this time, I want to focus my comments on the shortcomings of DOT's scheme.

The SNPRM fails to achieve one of its two primary objectives – reducing congestion and delays at LaGuardia. Despite no changes in airport capacity, and declining aircraft activity, LaGuardia delays have increased by more than 50% from 2004 to 2008. The Port Authority therefore concludes that airspace capacity has declined. The FAA SNPRM clearly defines airspace management as the FAA's responsibility. The SNPRM fails to acknowledge that airspace capacity has declined, fails to provide any evidence or analysis of what the new airspace capacity is, fails to provide any indication of whether the FAA can restore airspace capacity to previous levels, and fails to establish the cap at a level that matches current airspace capacity which is now below runway capacity. While the DOT and NEXTOR have been obsessed with promoting auction schemes, they have failed to address one of their core responsibilities.

Auctions are <u>not</u> the solution. For seven years the NEXTOR professors tried to show us how auctions could work in the aviation context. With great theoretical detail, they spoke on the mechanics of the auction and their philosophical belief that a market-based solution would solve all issues. However, each of the NEXTOR presentations would stumble at the same place – there was no recognition of the real world concern of how the winning bidder would have access to the appropriate gate, check-in facilities, baggage belts, lounges, and other terminal and landside facilities needed to actually operate the slot.

A member of my staff referred to this as the “Fatima moment”. After espousing all wonders of how an auction would work, the professors would simple say that the Port Authority would figure out how to provide operational sustenance to the new carrier – that is, a miracle would occur.

From this airport operator’s perspective, it is not that easy, and I cannot operate my airports in this manner.

We have discussed these concerns at length with the FAA, DOT and their consultants. We gave them numerous tours of the Airport and identified the various constraints that we operate under at LaGuardia. Despite these efforts, the Administration’s original NPRM for LaGuardia contained some rather disturbing language on this subject. Although they acknowledged the landside constraints and our existing business arrangements, they and NEXTOR tried to assume them away by reminding the Port Authority about its grant assurances that ensure access to its airports. While we have made and continue to make reasonable efforts to accommodate new entrants and others at our airports, we cannot accept wholesale disruption of our operations.

Their proposal is fundamentally flawed in that it did not properly marry the airside capacity with landside capacity. We can only imagine what would have ensued if DOT and their professors were around when the transcontinental railroad was constructed in the 1860's – the east and the west would have never met in Promontory Summit, Utah.

Gates and terminal facilities are not interchangeable. We applaud this Committee's recognition that airport gates are not interchangeable in hearings conducted in 2000. However, the experts at DOT fail to acknowledge this fact. A wide-body aircraft cannot be accommodated at a regional jet gate. A new entrant carrier cannot operate efficiently if its flights can only be accommodated in different terminals. Furthermore, the Port Authority has developed various business arrangements – legal, binding contracts -- with our airline tenants that provide the operational framework and financial underpinnings for the development of the airports. These contracts cannot be ignored.

The professors providing auction advice to the Administration admitted in a publication released last year that they **"**… **assume** that the FAA has established the number of slots that will be available for auction based on runway and landside capacities. The leaseholder of that slot is given the right to trade or sell this slot for any portion of the leasing period in a secondary market. **The leaseholder also receives the corresponding rights to terminal space, e.g. ticketing, baggage, and gating facilities and will pay the "going rate" for**

these facilities based on the current long-term contracts with the local airport authority."

This is not the case. And, it highlights the fundamental flaw in the Administration's scheme. Despite some recent efforts by the FAA to address flight delays and congestion and identify options to enhance capacity, the DOT has been obsessed with imposing so-called "market-based" auctions as an ideological solution ignoring all practical realities and shortcomings.

And, we believe that these shortcomings are significant.

We are concerned that auctions will reduce, not enhance, competition. The auction schemes will strongly favor those larger airlines with the most cash on hand to buy slots at a price above those with less cash on hand. It is possible that the larger carriers could use their relatively stronger balance sheets (despite the current financial challenges faced by the industry) to outbid the smaller, non-legacy airlines that help stimulate competition. The "value" of a slot could be driven by the benefits a large carrier would reap from eliminating competitors rather than from the operation of the slot itself. The SNPRM appears to encourage this behavior since it explicitly exempts so-called Unrestricted Slots (which are slots awarded via an auction) from any minimum usage standard. In fact, our analysis indicates that the low-cost carriers that have gained access to

LaGuardia will lose the largest share of their operations. The result could be a significant increase in airfares.

We are also concerned that the number of destinations, particularly small communities, served from our airports will be impacted. The Port Authority has long been an advocate for ensuring that service to small communities is preserved and our own analyses has shown that this service was particularly vulnerable to market-based solutions. We have suggested various proposals over the years to include either a set-aside or slots or gates for small communities.

The impact on small community service has been evident during the first NEXTOR exercises conducted in 2004 about LGA with airline and airport participants. The results showed that communities with populations under 500,000 were likely to lose frequency of service, if not lose the service completely. In a presentation prepared for the Transportation Research Board in January 2005, NEXTOR acknowledged that for communities of this size, the number of frequencies was slashed from 130 per day to 60 and for communities between 500,000 and 1 million, the number of operations plummeted from 118 per day to 60.

Let me give you an idea of the service that is vulnerable: cities such as, Huntsville, Lexington, Des Moines, Flint, Bangor, Madison, Ithaca, Roanoke, Knoxville… unfortunately I could go on … could not only lose service to LGA, but to the greater New York City area. Others, such as Myrtle Beach, Columbus, Richmond, Savannah, Jacksonville, and Buffalo could see reduced service and higher air fares.

And this is not only a New York phenomenon. In 2005 NEXTOR conducted a study called: Using Auction-Based Slot Allocation for Traffic Demand Management at Hartsfield Atlanta International Airport: A Case Study. It found that "As expected, when money is the only determination factor, small aircraft with less revenue are the first to be eliminated from the auction process…. As a result, potential distortions of the marketplace could impact <u>negatively</u> access to small communities or fair competition."

More recent analysis from the NEXTOR professors has identified three communities that would lose service altogether, but given the economics of the aviation industry at the moment; I firmly believe that this analysis is woefully underestimating the impact.

Small communities in general are served by fewer carriers than larger ones. There are 21 small and non-hub markets with service to LaGuardia on a single carrier. When a small community loses service on its only carrier to LaGuardia, it is unlikely that community will regain the service, since the carrier gaining the slots in the auction may not even serve the community in question. The FAA did acknowledge that the cost per seat of the auction price is "2 to 6 times higher for regional jets and turboprops". Because that most of the small and non-hub markets are served by regional jets and turboprop aircraft, the auction schemes give these markets a significant cost disadvantage against larger markets. There is a very real risk that a significant portion of the small communities will lose their air service to LaGuardia and not gain a replacement carrier.

It is clear to us, given these fundamental flaws, that DOT's proposed auction scheme is not the right solution for the New York airports. Although market-based solutions may have a place in the aviation industry, such approaches must be carefully crafted together with the airport operator who is in the best position to know how and when it can be employed.

We firmly believe that there are proven alternatives, such as an IATA-like scheduling process in conjunction with both local leasing practices and policies and a specific federal set-aside for small community service. If adopted, this approach would maintain competition, diversity of service and reasonable air fares for the traveling public. An IATA-like process would incorporate the airside and landside capacities into the slot allocation process as well as providing accommodations for new entrants. Local leasing policies would be important to promote the efficient use of facilities consistent with market demand. Federal rules could identify a certain portion of slots exclusively for service to small and non-hub communities.

We also believe that transparent buy/sell rules, along with the elimination of the current regulatory uncertainty, would establish a working market for slots. Most markets do not have auctions, but work and establish fair value without much difficulty. This secondary market would promote efficiency and competition by allowing carriers to sell and trade slots.

Further, we are advancing several major initiatives to enhance capacity at LaGuardia and the New York area airports including further airfield pavement projects to improve the efficiency of the airport, planning for a new central terminal building to increase gate size at LaGuardia, and the funding the Stewart Airport rail study to enhance Stewart as a viable alternative airport. We remain committed to working with the FAA and key stakeholders in advancing the right approach for the New York region airports.